IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.340 OF 1992.

1. Nav Maharashtra Containers P. Ltd.
   691, Ganpati peth, Sangli.

2. M/s. Maharashtra Steel Containers
   Industries,
   B-I, MIDC, Kupwadi,
   Sangli.

3. Kanheylal Vishandas Gidwani,
   Occ: Business

4. Gulab Vishandas Gidwani,
   Occ: Business

5. Mathirbai Vishendas Gidwani,
   Occ: Business

6. Mayabai Gordhandas Gidwani,
   Occ: Household and business

7. Ashabai Shamsunder Gidwani
   Occ: Household and business

..Appellants
(Original Defendants)

versus

1. Shah Nagindas Manchharas & Sons,
   a registered partnership firm,
   Station Road, Kolhapur

2. Shri Rohitbhai Nagindas Shah,
   Occ: Business,
   res. at 455-E Ward,
   Station Road, Kolhapur.

3. Smt.Pamaben Dinkarbhai Shah,
   Occ: Household, res. at
   Dipashri, Ruikar Colony,
   Kolhapur.

4. Shri Anil Dinkarbhai Shah,
   Occ: Business, res. as above.

5. Shri Shailesh Dinkarbhai Shah,
Occ: Business, res. as above

..Respondents
(Original Plaintiffs)

Mr.B.P.Apte, Sr. Counsel with Shri Tapurh Singh i/b. Shri M.R.Bubna for the Appellant.

Mr.C.R.Dalvi, Sr. Counsel with Shri K.Y.Mandlik & H.R.Solkar i/b. Thakore Jariwala, Advocate for the Respondent No.1.

Shri Priyal G. Sarda i.b. Shri Vineet S. Naik for Respondent Nos.2 to 5

Coram : S.B.Mhase &
S.R.Sathe, JJ.
Dated : 8th August, 2007

JUDGMENT (Per S.R.Sathe, J.)

1. Appellants, the original defendants in Special Civil Suit No.111 of 1988 have preferred this appeal against the judgment and order passed by the Court of Civil Judge, Senior Division, Kolhapur, whereby the plaintiff's suit for recovery of money was decreed and defendants 1 to 7 were directed to pay the amount of Rs.39,22,425.40p with future interest at the rate of 20% per annum with half yearly rest on Rs.22,94,154.40p to plaintiffs and the cost of the suit to plaintiff. For the sake of convenience hereafter the parties shall be referred

to as plaintiffs and defendants.

2. Brief facts giving rise to this appeal are as under:

. Plaintiff is a registered partnership firm dealing in iron and steel having its office at Station Road, Kolhapur. The defendant Nos.3 to 7 were carrying on business of manufacturing steel container at D-1, MIDC, Kupwad, District : Sangli under the name and style of M/s. Maharashtra Steel Container Industries i.e. Defendant No.2. By letter dated 27.10.1987 the defendant No.1 informed the plaintiff that the assets and liabilities of defendant No.2 firm have been taken over by the defendant No.1, private limited company. However, according to plaintiff the said taking over of assets and liabilities was not done with his consent and as such the alleged change was not binding on the plaintiff.

3. The defendant No.2 was granted the Import License for importing 5000 tons of Cold Rolled Sheets. They were therefore in need of financial assistance. The plaintiff agreed to provide

financial assistance on a condition that the defendant No.2 shall sell the imported goods or finished products of the said imported goods through plaintiff whereby the plaintiff would get atleast 2% commission. The Plaintiff, therefore, made available financial assistance to defendant No.2 from time to time as shown in the statement of account enclosed to the plaint. The defendant No.2 agreed to pay 20% interest per annum with half yearly rest on the amount advanced to defendant No.2. According to plaintiff the defendants 2 to 7 failed and neglected to sell the imported goods or their products through plaintiff. Plaintiff, therefore, called upon the defendant No.2 to repay the amount advanced to them. The defendants, instead of repaying the amount, confirmed their indebtedness towards the plaintiff to the extent of Rs.18,76,008.40 as on 30.6.1986. However, the defendants did not repay any amount. Hence the plaintiffs filed the present suit on 7.4.1988 for the recovery of the amount of Rs.22,94,154.40p being the principal amount with interest till 31.12.1986 (as per the statement of account), Rs.6,28,222/- future interest from 1.1.1987 to 5.4.1988 and Rs.10,00,000/- towards 2% commission on estimated

sales of about Rs.5 crores and typing charges Rs.50/-, in all Rs.39,22,425.40p.

4. The defendant No.1 filed its written statement at Exhibit 45 and opposed the suit claim. They contended that they have no knowledge as to whether the plaintiff is a registered partnership firm. They also showed ignorance about the constitution of the defendant No.2 firm. According to defendant No.1 as plaintiff had alleged that the change, namely taking over of assets and liabilities of defendant No.2 by defendant No.1 was not admitted by the plaintiff, the plaintiff was in fact, not entitled to file the present suit against the defendant No.1. The defendant No.1 contended that the plaintiff cannot blow hot and cold at one and the same time. If plaintiff consents to taking over of assets and liabilities of defendant No.2 by defendant No.1, then only defendant No.1 would be responsible for the dues of defendant No.2, if the same are proved by the plaintiff and in that case the defendants 2 to 7 will be absolved of their liability towards the plaintiff. In short the defendant No.1 contended that the plaintiffs claim can be decreed only against the defendant No.1 or

against the defendants 2 to 7, but not against all.

5. The defendant No.1 further contended that the transaction between the plaintiff and defendant No.2 was money lending transaction and as the plaintiff was not having necessary license under the Bombay Money Lenders Act, the suit is bad in law. The defendant also denied plaintiffs claim with regard to 2% commission. The defendant also contended that the transaction was not made at Kolhapur and as such the court of CJSD Kolhapur had no jurisdiction. Besides this, the defendant also contended that the suit is barred by law of limitation. Hence, on all these grounds the defendant No.1 prayed for dismissal of the suit.

6. The defendants 3 to 7 filed their written statement Exhibit 66 and took the similar contentions. They contended that the suit transaction is of money lending. At the time of said transaction the defendant had even not obtained the import license. So, there was no question of selling importing goods or finished products through the plaintiff. According to them plaintiff had agreed to advance money at the rate of 18% per annum

interest. Besides this there was no other agreement between plaintiff and defendants. They also contended that the letter dated 27.10.1987 is not written by them and the plaintiff has misconstrued the said letter. According to the defendants, the transaction between plaintiff and defendant had not taken place at Kolhapur. Plaintiff used to pay the amount by cheque or draft payable at Sangli or Mumbai and as such the court of CJSD Kolhapur had no jurisdiction. Besides this, the defendant also contended that defendant No.2 took advance from time to time and the transaction of each advance was separate and independent. So, most of the plaintiffs claim is time barred. They also denied plaintiffs allegation that they had agreed to pay 20% interest with half yearly rest. Hence, on all these grounds the defendants prayed for dismissal of the suit and alternatively contended that if at all plaintiffs suit is decreed then defendants be permitted to pay the said amount by instalments.

7. On these pleadings the learned trial Judge framed issues at Exhibit 67. In order to prove the suit claim the plaintiff examined Dinkarbhai Shah-Exhibit 51 and witness Surendra Waknis-Exhbit

89 and Anandrao Magar Exhibit 91. As against this, on behalf of defendants 3 to 7 Kanhaiyalal Gidwani (original defendant No.3) was examined at Exhibit 97. Both the parties produced certain documents.

8. After considering the evidence adduced by both the parties, the learned trial judge came to the conclusion that the plaintiff is a registered partnership firm and defendants 2 to 7 had initially taken the advances as shown by the plaintiffs and agreed to pay interest at the rate of 20% per annum with half yearly rest. He also held that the plaintiff was to get 2% commission and the defendant had acknowledged the liability and thus the entire suit was in time. The learned trial judge also held that there was no necessity for the plaintiff to exercise election and to decide whether he has to proceed against the defendant No.1 or against defendant Nos.2 to 7 because plaintiff had not given consent to defendants 2 to 7 to transfer the assets and liabilities to defendant No.1. According to him, all the defendants were jointly and severally liable to pay the plaintiff’s dues. He, therefore, decreed the suit accordingly.

9. Being aggrieved by the said judgment and order the defendants have filed the present appeal. In this appeal before us, Shri B.P.Apte, learned Senior Advocate has urged several points. Firstly, he submitted that it was necessary for the plaintiff to decide as to whether he wanted to proceed against defendant No.1 or against defendant No.2 to 7. Once it was held that the assets and liabilities were taken by the defendant No.1 then according to him as per the provisions of Section 62 of the Indian Contract Act, the plaintiff was entitled to file suit only against defendant No.1. So, according him the decree passed jointly and severally against all the defendants is not maintainable. Secondly, he canvassed before us that the learned trial judge has failed to consider that the claim with regard certain advances was barred by limitation. Thirdly, the learned advocate for the defendant submitted that the transaction between plaintiff and defendants 2 to 7 was in fact of money lending and as admittedly plaintiff was not having money lending license at the relevant time, the suit is barred by the provisions of Bombay Money Lenders Act. Fourthly, he submitted that there was no question of charging commission because there was no agreement

between the plaintiff and defendants 2 to 7 that they would sell the goods through plaintiff. Fifthly, the learned advocate for the defendants argued before us that the interest charged by the plaintiff is exorbitant and it is against the provisions of the Banking Regulation Act as well as the Usurious Loans Act. Lastly, he submitted that the cheques that were issued by the plaintiff to defendants were payable at Bombay or Sangli and as such the court of CJSD Kolhapur had no jurisdiction. Hence, on all these grounds he submitted that the appeal be allowed and the suit filed by the plaintiffs be dismissed.

10. As against this, Shri C.R.Dalvi, learned Senior Advocate for the plaintiff supported the judgment and order passed by the learned trial Judge. He submitted that in view of the letter Exhibit 52 issued by the defendant No.1, the plaintiff is entitled to recover the amount from the defendant No.1 as well as from the defendant Nos.2 to 7. According to him, there was only change in the name of the firm, but the partners of defendant No.2 firm were also partners or the directors in the defendant No.1 company and as such the order passed

by the learned trial Judge was legal and correct. He also submitted that there is no substance in the other contentions taken by the defendants and the same are taken only with a view to prejudice the court and delay the payment. Hence, on all these grounds, he submitted that the appeal be dismissed.

11. From the pleadings of the parties, evidence on record and the submissions made before us it is very clear that it is in fact not in dispute that the plaintiff advanced money from time to time to defendants 2 to 7 as shown by the plaintiff in their statement of account Exhibit 54. In fact in Exhibit 53 which is letter addressed by Nav Maharashtra Containers Private Limited i.e. Defendant No.1 to plaintiff the amounts advanced to defendants have been mentioned and the same are admitted by both the parties. The dispute is with regard to rate of interest. According to defendants the plaintiffs had agreed to charge interest at the rate of 18% per annum, while it is the case of the plaintiffs that amount was advanced at the rate of 20% per annum. From the evidence of plaintiffs which is at Exhibit 51 it is clear that interest was to be paid at the rate of 20% per annum. If we peruse the statement

of account given by the defendants to plaintiff which is at Exhibit 53 we find that the defendants have in fact charged the interest at the rate of 20%. So, now the defendants are in fact estopped from contending that the agreed rate of interest was 18% per annum. So, the learned trial Judge has rightly held that the defendants had agreed to pay interest at the rate of 20%.

12. Shri Apte, learned Senior Advocate for the defendants argued before us that in the instant case it appears that the plaintiff in fact obtained the loan from the bank in order to carry out his money lending transaction and accordingly he paid the amounts to the defendants. It is true that an attempt was made on behalf of the plaintiffs to show that they obtained loan from the bank and as they were required to pay service charge of 1% on the same, they advanced the amount to defendants at the rate of 20% per annum. It is therefore argued that such transaction was in fact not permissible under the Banking Regulation Act. However, if we carefully peruse the entire evidence then it is quite evident that the plaintiffs had not obtained loan from the bank with a view to do any money

lending transaction. The plaintiff has stated when defendant approached plaintiff, plaintiff agreed to provide financial assistance because that defendants agreed that they would sell their products through plaintiffs and thereby plaintiff would be able to get 2% commission. So, in a way even if some loan is obtained by the plaintiff initially from the bank that was obviously in connection with his business transaction. It cannot be said that the said loan was obtained to carry on money lending business. So, there is no question of any breach of provisions of Banking Regulation Act as tried to be argued by the defendants.

13. From the evidence of plaintiff coupled with Exhibit 53 and 54 it is very clear that on the date of filing of the suit amount of Rs.22,94,154.40p was due from the defendants to plaintiffs and the said amount was containing the principal amount as well as the interest on the said amount till the period 31.12.1986. No doubt plaintiff was also entitled to get interest at the rate of 20% on the said amount of Rs.22,94,154.40 for the period from 1.1.1987 to 5.4.1988.

14. From the perusal of the particulars of claim given in the plaint it appears that the plaintiff has charged Rs.10,00,000/- towards commission at the rate of 2%. The learned trial Judge has granted the claim for commission to the plaintiff. However, it was strenuously argued on behalf of the defendants that there was absolutely no evidence to support the plaintiff's claim regarding commission. If we peruse the plaintiff's evidence it is very clear that there was no written agreement regarding payment of the said commission. Though it is tried to be suggested that plaintiff was to receive the commission on the goods sold by the defendants, the plaintiffs had not adduced any evidence to show that goods of particular value were actually sold by the defendants. When such evidence is lacking plaintiff is certainly not entitled to get the commission. A feeble attempt was made on behalf of the plaintiffs to show that the defendants had imported raw iron/steel and the plaintiffs have estimated the sale of Rs.5 Crores. For this also there is not even slightest evidence. Besides this, if really there would have been agreement to charge commission at the rate of 2% then certainly plaintiff would have shown the said commission in the defendants

account in his books of accounts. But, admittedly no such commission is shown in the books of account of plaintiffs as well as of the defendants. What is more to be noted is even in the statement of account which was forwarded by the defendants to plaintiff vide Exhibit 53 the defendants had not shown the amount of commission but they had only shown the amount which was due from the defendants to plaintiff towards principal and interest. On receipt of such statement plaintiffs did not raise any dispute about the correctness of the statement sent by the defendants, but on the contrary plaintiff confirmed the said statement. So, it clearly goes to show that there was no such agreement with regard to payment of commission. So, we have no hesitation to hold that plaintiff is not entitled to get commission of Rs.10,00,000/- as shown in paragraph No.15 of the plaint.

15. Shri B.P.Apte, learned Senior Advocate for the defendants argued before us that the transaction between plaintiffs and defendants was purely of money lending. It has come on record that plaintiff had even maintained separate interest account and he had given advances to 5 to 10 persons. Thus,

according to him his evidence goes to show that the plaintiff was not holding any license under the Bombay Money Lenders Act, so the suit is liable to be dismissed in view of the provisions of Section 10 of the Bombay Money Lenders Act, 1946. It is true that the plaintiffs are not holding the money lending license, but the main point is whether the transaction in question was of money lending and whether there is cogent evidence to hold that plaintiffs were infact doing business of money lending. While considering this aspect it must be noted that though the defendants have taken contention that the transaction in question was of money lending they have not adduced any cogent evidence in that behalf. It is worth to note that the defendant No.3 has not even stated in his deposition that the plaintiffs are doing money lending business. It is clear from the plaintiffs evidence that defendant approached plaintiff and requested to give financial assistance and plaintiffs agreed to give the same on condition that defendants would be selling their finished products or imported goods through plaintiff and plaintiff would get 2% commission. It is true that ultimately there is no evidence on record to show that such

goods were actually sold by the defendants through plaintiffs. However, at the same time it has come in evidence that previously at some point of time the plaintiff had sold the goods of the defendants. Moreover, it is admitted fact that the plaintiffs are also doing business of iron and steel. So the plaintiffs advanced money not as a money lender but during the course of their business they entered into above mentioned peculiar transaction whereby the plaintiff was to provide financial assistance and defendants had agreed to sell their goods through plaintiff. So, the suit transaction is in fact the business transaction carried out by the plaintiffs in their usual course of business. If we see the provisions of Section 2(9)(fii) of the Money Lending Act, it is clear that when money is advanced at interest and the said advance is made bonafide by any person carrying on any business, not having for its primary object the lending of money if such advance is made in the regular course of his business, then it is not covered by the term ‘loan’. So, in the instant case the learned trial Judge has rightly held that the provisions of Section 10 of the Bombay Money Lenders Act are not applicable to the suit transaction and such it cannot be said that

the transaction is hit by Bombay Money Lenders Act.

16. It was argued on behalf of the defendants that interest charged by the plaintiffs is exorbitant and it is hit by the provisions of Usurious Loans Act, 1918. It was, therefore, submitted that even if it is held that the defendants had agreed to pay interest at the rate of 20% with half yearly rest, then as the said interest is exorbitant, the same be reduced. For this purpose, the learned advocate for defendants has drawn our attention to a case **Beninson and Others vs. Shiber AIR (33) 1946 Privi Counsel 145,** wherein it is held that "by purporting to settle final accounts the parties can not evade the imperative provisions of law. Whatever form and agreement between lender and borrower may take, if it is once suggested that excessive interest is being charged and if the account is still open to review, the court is entitled and indeed bound to investigate the transaction which the agreement purports to regulate or to close and if it be found that performance of the agreement will result in excessive interest being paid, it is the duty of the Court to reduce the interest to the legal rate."

Firstly, it must be noted that in the instant case it has come on record that at the relevant time even the bank used to advance loan at the rate of 18%. So, if we consider the agreement between the plaintiffs and defendants whereby defendant has agreed to pay 20% interest it cannot be said to be exorbitant rate at that time where despite the contract between the parties the court should intervene. Besides this, we also cannot ignore the fact that there is nothing on record to show that the defendants had not given any security for the amount advanced by the plaintiff. So, considering all these aspects the rate of 20% per annum certainly cannot be called exorbitant. Hence, the above ruling is of no use to the defendants.

17. The main and the material point which was canvassed before us by Shri B.P.Apte, learned Senior Advocate for the defendants is that in the instant case, plaintiffs are claiming dues from defendant No.1 as well as from the defendant Nos.2 to 7. According to him, the plaintiffs have in fact admitted that the defendant No.1 has taken over the assets and liabilities of the defendants 2 to 7 and as such the provisions of Section 62 of the Indian

Contract Act are applicable and hence plaintiff has to elect and decide as to from whom he wants to claim his dues. In order to find out whether the defendants can take aid of Section 62 of the Indian Contract Act, it would be worthwhile to see what that sections says. It runs as follows:

> **Section 62: Effect of novation, rescission, and alteration of contract:** If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

In the instant case, firstly, it must be noted that the question of application of the above mentioned section arises only when the parties to the contract agrees to substitute the new contract. In the present case, right from the beginning, the plaintiffs have categorically stated that though the defendants 2 to 7 are saying that their assets and liabilities are taken over by the defendant No.1, but the same is not with the consent of he plaintiffs. So, when there is nothing on record to show that all the parties to the agreement have agreed to substitute new contract in place of old, the question of application of Section 62 does not arise. While considering this question, it is

worthwhile to see the letter that has been written by the defendant No.1 to the plaintiffs on 27.10.1987. In this letter the defendant No.1 Nav Maharashtra Containers Pvt. Ltd. has informed to plaintiff as under:

> "Please find herewith enclosed the statement of account as per the books for the year 1984-85 and 1985-86.
>
> Please note that the constitution of our firm has been changed from partnership firm to private limited company i.e. from Maharashtra Steel Container Industries to Nav Maharashtra Containers Pvt. Ltd.
>
> Kindly confirm the statement and arrange to sent one copy duly confirmed at the earliest for our records."

17. It is an admitted fact that along with this letter the defendant No.1 forwarded statement of account of the plaintiffs and the same has been confirmed as true and correct by the plaintiffs. One may argue that by virtue of this confirmation the plaintiffs have agreed that the assets and liabilities of defendant No.2 have been taken over by defendant No.1 or that the plaintiffs agreed to put an end to earlier contract with defendant No.2 and entered into new one with No.1. We cannot

ignore the fact that in the letter Exhibit 52 the defendant No.1 has not even whispered that they have undertaken the liability of defendant No.2, nor it is suggested by defendant No.1 in the said letter that a new agreement has come into existence between plaintiffs, defendant No.2 and defendant No.1. All that they had communicated by letter exhibit 52 was that the constitution of their firm has been changed from partnership firm to private limited company. Had it been the intention of the defendants 1 and 2 to inform the plaintiffs that as a result of the change in the constitution, the defendant No.2 or its partners namely defendant Nos.3 to 7 would not be liable for the plaintiffs dues and the said liability has been taken over by the newly constituted body then they would have certainly informed accordingly to plaintiffs. But that has not happened. Besides this, what is more to be noted is that while writing the letter the defendant No.1 has informed that their constitution of the firm has changed. So, in a way it suggested that whatever was the liability of the defendants vis a vis plaintiffs. On that day it continues. In fact, the said letter goes to show that as a result of the change in the constitution even the newly

constituted body also took the responsibility with regard to plaintiffs dues. In fact, we find that all those persons who were partners of the defendant No.2 firm were also shown as directors of defendant No.1 firm. The letter in fact shows that the liability of the earlier firm continues and the new body which came into existence also took the responsibility. There is nothing in the letter Exhibit 52 to show that the parties agreed for extinguishment or discharge of the old obligation. It is needless to say that the substitution of the new contract for the old one is the core of novation as per Section 62 of the Indian Contract Act and substitution of new contract is not at all visible in the present transaction. So, it is very clear that the present plaintiffs had certainly not agreed for the new contract. So, naturally they are entitled to recover the amount from the defendants 2 to 7. The question may arise that if it is so then Defendant No.1 cannot be sued because that is a different entity. However, while considering this aspect when we find that the defendant No.1 has in fact by sending letter Exhibit 52 had shown that they are accepting the responsibility in respect of the amount due to plaintiff then we think that

plaintiff is entitled to sue defendant No.1 also along with defendants 2 to 7. So, as a result of the agreement between defendant No.1 and 2, defendant No.1 represented that they are accepting the liability. But the agreement entered between the defendant Nos.1 and 2 was not with the consent of plaintiff. So, under such peculiar circumstances the trial Judge was justified in passing the decree jointly against defendants Nos.1 to 7.

18. It was argued on behalf of the defendants that the first amount that was advanced to the defendants was on 6.11.1984. Thereafter on 3.12.1984, 5.2.1985, 20.2.1985, 21.2.1985, 20.3.1985 and 28.3.1985 and then on 19.4.1985. However, the suit for recovery of the said amount is filed on 7.4.1988 and as such the claim in respect of the amounts which were advanced prior to three years of the filing of the suit is time barred. However, it must be noted that the defendants have infact admitted by letter dated 27.10.1987 that the amount of Rs.18,76,008.40p was due from the defendants to plaintiff. So, by this letter they have in fact admitted and acknowledged their indebtedness on that day. Besides this we find that the defendants have

also made payments to plaintiffs on various dates between 5.2.1985 to 21.5.1986. So, having regard to these facts, it can very well be said that the plaintiff's claim was not barred by law of limitation.

19. The defendants have taken the contention that the cheques that were issued by the plaintiffs to defendants were drawn at the Bank situated at Sangli or Mumbai, and as such the Court of CJSD, Kolhapur had no jurisdiction. However, it is pertinent to note that even the defendant No.3 has clearly stated in his deposition that some amounts were paid by the plaintiffs at Kolhapur. Moreover, the defendants are also doing business at Kolhapur. So the cause of action for the suit had also arisen at Kolhapur and as such the Court of CJSD Kolhapur, had jurisdiction to try the present suit. There is no substance in the argument advanced by the learned Advocate for the defendants that the Court of CJSD, Kolhapur had no jurisdiction.

20. Shri C.R.Dalvi, learned Senior Advocate for the plaintiff argued before us that in the instant case the trial court has awarded future interest at

the rate of 20% per annum with 1/2 yearly rest on the principal amount of Rs.22,94,54.40p from the date of filing of the suit till realisation of the amount. But having regard to the provisions of Section 34 of the Code of Civil Procedure, the Court should have granted 20% interest on the entire amount of Rs.39,22,425.40p because on the date of filing of the suit that was the principal amount. According to him interest ought to have been granted on compound principal claimed in the plaint and not on the original principal sum advanced. For this proposition he has drawn our attention to a case **Central Bank of India v. Tarseema Compress Wood Manufacturing Company and others AIR 1977 Bombay 225**. From the perusal of the said case and the case in hand it is clear that the facts of the said case and the facts of the present case are different. That was a case where bank had advanced loan. Here the basic transaction was a business transaction done with a view that the defendants should be able to do their business with the help of plaintiff and plaintiff would also get some commission. Hence the plaintiff advanced money. They have charged interest at the rate of 20% per annum at half yearly rests. So, under the circumstances, merely because

in the above cited ruling it was observed that interest ought to be granted on compounded principal claim in the plaint and not on the original principal sum lent, we are not inclined to grant interest on the total amount claimed in the plaint. In fact, in a case **Central Bank of India v. Ravindra & Others AIR 2001 SC 3095** the Apex Court has observed that the award of interest Pendente lite and post decree is discretionary with the court as it is essentially governed by Section 34 of CPC, dehors the contract between the parties. In a given case if the courts find that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced, the court may exercise its discretion in awarding interest pendente lite and post decree interest at lower rate or may even decline awarding such interest. So, considering this aspect it is to be said that in the instant case, the learned trial Judge was justified in awarding 20% interest,till the filing of the suit, not on the total sum adjudged due on the date of the suit but on the actual sum which was advanced. So, we are not inclined to award interest on the total amount claimed in the suit.

21. So far as the interest pendente lite and interest from the date of decree is concerned, one has to take into consideration all the facts and circumstances of the case. In the present case the plaintiff has charged 20% interest with half yearly rest till filing of the suit. Considering the original amount advanced as well as the interest component due till the filing of the suit we are not inclined to grant future interest at the rate of 20% particularly when during last so many years the interest rate has considerably gone down. We are of the considered view that this is a fit case where future interest at the rate of 8% per annum can be granted.

22. In view of the above discussion, we pass the following order:

ORDER

. The Appeal is partly allowed.

. The defendants 1 to 7 to pay jointly and severally to the plaintiffs Rs.22,94,154.40p and

future interest on the said amount at the rate of 20% per annum from 1.1.1987 till the date of filing of the suit, and the interest at the rate of 8% (Eight percent) per annum on Rs.22,94,154.40p from the date of the suit till realisation of the amount.

. The defendants to pay to the plaintiff the proportionate cost of this appeal and bear their own.

(S.R.Sathe, J) **(S.B.Mhase.J)**